

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: ) Art Unit: 1648  
CLASSEN, John B. ) Examiner: B. BRUMBACK  
Appln. No.: 08/591,651 ) Washington, D.C.  
Date Filed: February 12, 1996 ) March 5, 2003  
For: METHOD AND COMPOSITION FOR ) DOCKET: CLASSEN=1A  
AN EARLY VACCINE TO PROTECT )  
AGAINST BOTH COMMON... ) Confirmation No.: 9417

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REQUEST TO HOLD THE NOTIFICATION OF NON-COMPLIANCE  
WITH 37 CFR 1.192(c) IN ABEYANCE PENDING  
DECISION ON PETITIONS

**HAND CARRY TO GROUP**

Honorable Commissioner for Patents  
Washington, D.C. 20231

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S i r:

On November 5, 2002, Applicant filed an Appeal Brief which referred to a Declaration and certain exhibits filed October 18, 2002. The Declaration and exhibits were denied entry by the examiner on November 18, 2002, and Applicant's initial petition under 1.181, filed December 12, 2002, was denied on February 6, 2003.<sup>1</sup>

Subsequently, on February 11, 2003, the Examiner mailed a notification of noncompliance with 37 CFR 1.192(c) because, inter alia, the Brief referred to the aforementioned Declaration and exhibits.

On even date herewith, Applicants filed

- (1) a petition under 1.183, and
- (2) a request for reconsideration and modification of the decision on the prior 1.181 petition.

Consequently, it would be premature to require Applicant to revise the brief to excise reference to the aforementioned

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<sup>1</sup> This included a conditional petition under 1.183. The Group Director indicated that this needed to be filed as a separate paper, directed to the Office of Petitions.

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Declaration and exhibits. If either the request for reconsideration, or the 1.183 Petition, were granted, at least some of the references would be proper.

Counsel discussed this issue with the SPE, who agreed that the notification of noncompliance should be held in abeyance if a 1.183 petition was timely filed (we did not discuss a request for reconsideration).

Applicant requests that the notification of noncompliance be held in abeyance such that response is due one month from the date of the decision on the request for reconsideration or the date of the decision on the 1.183 petition, whichever is later.

Respectfully submitted,

BROWDY AND NEIMARK, P.L.L.C.  
Attorneys for Applicant(s)

By: \_\_\_\_\_

Iver P. Cooper  
Registration No. 28,005

Enclosures

-Courtesy copies of Request for Reconsideration and  
Rule 1.183 Petition, each stamped "copy" and unsigned.

624 Ninth Street, NW  
Washington, D.C. 20001  
Telephone No.: (202) 628-5197  
Facsimile No.: (202) 737-3528  
IPC:lms  
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